



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEB 08 2005

Via Certified Mail, Return Receipt Requested

**The Republican Victory Committee, Inc.
a/k/a Republican Victory 2004 Committee, Inc.
a/k/a Republican Victory 2004 Committee
and Jody Novacek, in her official capacity as treasurer
1221 Lakoridge Lane
Irving, Texas 75063**

RE: MUR 5472

Dear Ms. Novacek:

On January 31, 2005, the Federal Election Commission found that there is reason to believe the Republican Victory Committee, Inc. a/k/a Republican Victory 2004 Committee, Inc. a/k/a Republican Victory 2004 Committee ("Committee") and you, in your official capacity as treasurer, knowingly and willfully violated 2 U.S.C. §§ 433(a), 434(a) and 441h(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission further found that there is reason to believe that the Committee and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 441d(a) and 441d(c) of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

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**The Republican Victory Committee, Inc. and
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demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Alexandra Deumas, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


**Scott E. Thomas
Chairman**

**Enclosures
Factual and Legal Analysis**

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2 **FEDERAL ELECTION COMMISSION**

3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENT:** Republican Victory 2004 Committee, Inc. MUR: 5472
6 a/k/a Republican Victory Committee, Inc.
7
8
9

10 **I. GENERATION OF THE MATTER**

11
12 This matter was generated by a complaint filed with the Federal Election
13 Commission by Jill Holtzman Vogel, Chief Counsel, Republican National Committee.
14 See 2 U.S.C. § 437g(a)(1).
15

16 **II. BACKGROUND**

17 In 2004, the Republican Victory Committee, Inc. was formed and incorporated in
18 the State of Texas. "The Republican Victory Committee, Inc." has used different
19 variations of its name on different occasions and the Committee's purpose is unclear;
indeed, the Committee's own public filings are not consistent.

20 For example, on July 2, 2004, the Committee filed an initial Statement of
21 Organization with the Commission under the name "The Republican Victory Committee
22 Inc." The Statement of Organization was dated May 10, 2004; according to the
23 instructions for this form, this date should have reflected the date the group became a
24 political committee. The signature line was dated June 30, 2004 and the form listed Jody
25 Novacek as treasurer, custodian of records and designated agent. The form indicated that
26 the Committee was a separate segregated fund, but did not specify with which entity it
27 was affiliated.

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1 Therefore, on August 4, 2004, the Reports Analysis Division ("RAD") sent the
2 Committee a Request For Additional Information asking with which entity it was
3 affiliated as a separate segregated fund. On September 1, 2004, the Committee submitted
4 an amended Statement of Organization indicating that it was neither a separate segregated
5 fund nor a party committee. The Amended Statement of Organization was filed under
6 the name "The Republican Victory Committee" and the form again listed Jody Novacek
7 as ~~treasurer~~, custodian of records and designated agent. The Committee appears to
8 conduct business, however, under the names "Republican Victory Committee" and
9 "Republican Victory 2004 Committee."

10 The Committee also has vacillated regarding the type of organization it claims to
11 be. The Committee says that, in the late Winter or early Spring of 2004, it initially filed
12 with the IRS a Form 1023 Application for Recognition of Exemption under Section
13 501(c)(3). However, the Committee says that it later contacted the IRS, withdrew the
14 Form 1023, and, on May 10, 2004, filed electronically with the IRS a Form 8871 Political
15 Organization Notice of Section 527 Status. This form was filed under the name "The
16 Republican Victory Committee, Inc.," listed Jody Novacek, Freeda Novacek and Jason
17 Novacek as directors of the Committee, and listed Jody Novacek as custodian of records.
18 That filing claimed that the Committee was "[a] conservative, Pro-Republican Group
19 (sic) focusing on voter mobilization and issue advocacy at the state and local levels."
20 There is no record of any other filings by the Committee on the IRS website.

21 The Committee purports to be a "national organization" that is "conservative" and
22 "pro-Republican" and whose declared intent is to assist state and local elections.
23 However, the information provided by the Committee on various occasions presents

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1 contradictory evidence as to whether the organization was intended to influence, and in
2 fact was influencing, federal elections. For example, at times, the Committee stated that
3 its activities included voter mobilization and issue advocacy at the state and local levels,
4 and that it would support Republican candidates at the state and local level.

5 The Committee also has failed to file any reports with the Commission or IRS
6 regarding its finances. The Committee has, however, filed reports with the Texas Ethics
7 Commission from January 2004 through the end of July 2004, apparently under the name
8 "Republican Victory Committee." Those reports indicated nominal receipts and
9 disbursements for most of the covered periods, but stated that the Committee received
10 \$5,135 in receipts and made \$5,180 in disbursements for the period ending February
11 2004. The Commission is aware of only one political donation for \$100 made by the
12 Committee at the end of February 2004, as listed on a report filed by the recipient of that
13 donation, Jason Moore.¹

14 III. FACTUAL AND LEGAL ANALYSIS

15 A. *The Committee May Have Knowingly and Willfully Made Fraudulent* 16 *Misrepresentations in the Context of Soliciting Contributions and* 17 *Donations.* 18

19 It appears that the Committee and Ms. Novacek embarked upon a strategy to
20 solicit contributions and donations by making fundraising calls through telephone banks
21 and by following up on those phone calls with direct mailings. Those calls and mailings,
22 however, appear to have fraudulently misrepresented the Committee as affiliated with the
23 Republican Party. The Act, as amended by BCRA, states that no "person" shall:

¹ Jason Moore ran for a seat in the Texas House of Representatives, 81st District and was Chairman of the Texas Young Republican Federation.

1 (1) fraudulently misrepresent the person as speaking, writing, or otherwise
2 acting for or on behalf of any candidate or political party or employee or
3 agent thereof for the purpose of soliciting contributions or donations; or
4 (2) willfully and knowingly participate in or conspire to participate in any
5 plan, scheme, or design to violate paragraph (1).
6

7 2 U.S.C. § 441h(b).

8 To violate section 441h, the Act requires that the violator had the intent to
9 deceive, but does not require that the violator sustain all elements of common law fraud.
10 See MUR 3690; MUR 3700.² "Unlike common law fraudulent misrepresentation,
11 section 441h gives rise to no tort action..." and therefore proof of justifiable reliance and
12 damages is not necessary. See Explanation and Justification, 11 C.F.R. § 110.16, 67 Fed.
13 Reg. 76,969 (Dec. 31, 2002); *Neder v. United States*, 527 U.S. 1, 24-25 (1999) (citing
14 *United States v. Stewart*, 872 F.2d 957, 960 (10th Cir. 1989)). The BCRA amendments
15 were enacted in response to concerns that the prior version of the statute did not permit
16 the Commission to take action against persons not associated with a candidate or a
17 candidate's authorized committee. The amendment was necessary because contributors
18 often were solicited for money and believed their contributions and donations were
19 benefiting a specific candidate, only to learn later that the funds were diverted to another
20 purpose. The harm was therefore both to the candidate and the contributor. See
21 Explanation and Justification, 11 C.F.R. § 110.16, 67 Fed. Reg. 76,969 (Dec. 31, 2002).

22 The Committee and Mr. Novacek represented the Committee in a manner that
23 would lead a reasonable person to think the Committee's solicitations were either from

² In the past, the Commission has held on occasion that the presence of a disclaimer stating the person and/or entity that paid for and authorized a communication negates intent. See MUR 2205; MUR 3690; MUR 3700. As will be discussed in greater detail *infra*, the Committee did place a disclaimer on its mailing. See *infra*. However, in MUR 5089, the Commission more recently rejected the notion that such a disclaimer automatically negates intent and found reason to believe that a committee violated section 441h even with the presence of a disclaimer.

1 the Republican Party or from an entity affiliated with the Party. Courts have held that
2 even absent an express misrepresentation, a scheme devised with the intent to defraud is
3 still fraud if it was reasonably calculated to deceive persons of ordinary prudence and
4 comprehension. See *United States v. Thomas*, 377 F.3d 232, 242 (2d Cir. 2004), citing
5 *Silverman v. United States*, 213 F.2d 405 (5th Cir. 1954). Although the use of the word
6 "Republican" in its name alone is not dispositive, when combined with the other factors
7 listed below, use of "Republican" in its name likely led reasonable people to believe that
8 the Committee was affiliated with the Republican Party. Furthermore, the following
9 statements were used in the Committee's direct mailings:

- 10 • "Contributions or gifts to the *Republican Party* are not deductible as
11 charitable contributions."
- 12 • "I'm grateful *our Party* can count on your help to support Republicans
13 across the country win elections."
- 14 • "*The Republican Party* can count on my support to help candidates at
15 the state and local level. I'm proud to help *our Party* prepare for the
16 November election."

17 Here, a reasonable person reading those statements -- particularly the non-deductibility
18 notice, which deals with the offset of the contribution and cannot be dismissed as
19 rhetorical flourish -- would have believed the Committee was soliciting money on behalf
20 of the Republican Party.

21 Although not as clearly as the mailings, the telephone call solicitations also would
22 have led a reasonable person to believe that the Committee was acting on behalf of the
23 Republican Party. In the Committee's telephone call solicitations, the callers appear to

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1 have been instructed to speak only with registered Republicans. Once they were certain
2 they were speaking with a registered Republican, the callers asked for support for "our
3 state candidates and President Bush's agenda" because "[i]t's going to be tough to beat
4 the Democrats this fall." The caller explained, "Your financial help is critical so
5 Republicans can win...." The callers never stated that they were not affiliated with the
6 Republican Party, but their statements would have led a reasonable person to believe that
7 they were so affiliated.

8 If a recipient expressed confusion during the call, the caller was directed to use a
9 series of "rebuttals," drafted in advance by the Committee. The rebuttals set forth
10 answers to possible questions by call recipients, such as questions regarding for what
11 purpose the money would be used; questions asking who and what the committee was; or
12 statements expressing unhappiness with President Bush or the war in Iraq. However,
13 only if the recipient of the call explicitly articulated some hesitation or confusion similar
14 to the questions set forth above did the caller explain who or what the Committee was;
15 indicate in even an indirect way that the Committee was not affiliated with the
16 Republican Party, the Republican National Committee or President Bush; or indicate for
17 what purposes the donated money would be used.

18 Furthermore, the Committee's actions appear to have been knowing and willful.
19 The phrase knowing and willful indicates that "actions [were] taken with full knowledge
20 of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec.
21 H 2778 (daily ed. May 3, 1976); see also *Federal Election Comm'n v. John A. Dramesi*
22 *for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between
23 "knowing" and "knowing and willful"). A knowing and willful violation may be

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1 established "by proof that the defendant acted deliberately and with knowledge" that an
2 action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In
3 *Hopkins*, the court found that an inference of a knowing and willful violation could be
4 drawn "from the defendants' elaborate scheme for disguising their ... political
5 contributions...." *Id.* at 214-15. The court also found that the evidence did not have to
6 show that a defendant "had specific knowledge of the regulations" or "conclusively
7 demonstrate" a defendant's state of mind," if there were "facts and circumstances from
8 which the jury reasonably could infer that [the defendant] knew her conduct was
9 unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491,
10 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)). Finally, "[i]t has long been recognized
11 that 'efforts at concealment [may] be reasonably explainable only in terms of motivation
12 to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672,
13 679 (1959)).

14 The Commission previously has made knowing and willful and probable cause
15 findings against a committee and individuals that violated 2 U.S.C. § 441h. In MUR
16 4919 (East Bay Democrats), the Commission found probable cause to believe a violation
17 of section 441h occurred when a committee's campaign materials provided misleading
18 information to potential contributors. In that case, a Republican committee created a
19 fictitious committee using the word "Democratic" in the name of the committee and
20 mailed campaign materials to registered Democrats, requesting that they not vote for the
21 Democratic candidate. The mailing alleged that the Democratic candidate abandoned
22 "our party," implying that the sponsor of the mailing was affiliated with the Democratic
23 Party. The mailing also used the name of a local Democratic leader as the signator.

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**1 Finally, the letter conveyed actual Democratic Party views, in an attempt to make the
2 communications appear that they were legitimate communications of a local committee
3 of the Democratic Party.**

**4 In this case, the Committee used the word "Republican" as part of its name,
5 implying some type of affiliation with the Republican Party or RNC. Its mailing referred
6 to "our Party" and even explicitly referenced the Republican Party in an attempt to
7 convince the reader the mailing was from the Republican Party. The scripts provided by
8 the Committee provide for rebuttals and more detailed and descriptive explanations of the
9 Committee (for example, stating it was not affiliated with or working on behalf of the
10 Republican Party or the Bush-Cheney campaign) -- but only if the recipient of the call
11 specifically asked the question. Furthermore, the fact that these descriptions had already
12 been drafted and incorporated into the call script demonstrates the Committee's
13 knowledge that the phone calls likely would be confusing to the intended recipients, and
14 yet all failed affirmatively to address this potential confusion.**

**15 Finally, the Committee's failure to file reports with the Commission indicating on
16 what, if anything, the money raised has been spent may be probative of the Committee's
17 intent to misrepresent itself to the public. See *infra*. As described in further detail below,
18 the Committee has indicated that it has engaged in \$50,000 worth of activity, but has
19 failed to disclose to the Commission the source of its money and/or the methods by
20 which it has expended any money. See *United Health Care Corp. v. American Trade Ins.*
21 *Co.*, 88 F.3d 563 (8th Cir. 1996) (holding that evidence of planning and intent to deceive
22 was demonstrated by review of the money trail, which showed the money was not used
23 for its intended purpose). It is unknown whether the money was placed in a bank account**

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1 separate from other monies or if it was commingled with other accounts. In fact, the only
2 indication of any political expenditure is a \$100 donation to a state candidate in Texas, as
3 reported by that candidate (not the Committee). The Committee's actions can be used to
4 infer that the Committee knowingly and willfully attempted to fraudulently misrepresent
5 the Committee's true identity to those from whom it was soliciting money.

6 Accordingly, the Commission found reason to believe that the Committee
7 knowingly and willfully violated 2 U.S.C. § 441h(b)(1).

8 **B. The Committee Participated in a Scheme or Plan to Violate 2 U.S.C.**
9 **§ 441h(b)(1).**

10
11 In contravention of 2 U.S.C. § 441h(2), the Committee also participated in a
12 scheme with Jody Novacek, BPO, Inc. and BPO Advantage, LP to violate 2 U.S.C.
13 § 441h(1). Subsection 2 requires that violations of 2 U.S.C. § 441h(b)(1) be knowing and
14 willful.³ As stated above, the phrase knowing and willful indicates that actions were
15 taken with knowledge of the facts and with recognition that the action is prohibited by
16 law. 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); *Federal Election Comm'n v. John*
17 *A. Dramei for Cong. Comm.*, 540 F. Supp. 985, 987 (D.N.J. 1986). Furthermore, efforts
18 at concealment may demonstrate a defendant's state of mind and intent to violate the law.
19 See *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990).

20 BPO, Inc. is a company owned and operated by Jody Novacek. BPO Advantage,
21 LP is a marketing and consulting company also owned by Jody Novacek and listed as an

³ Section 441h(b)(2) requires that a respondent "willfully and knowingly" participate in, or conspire to participate in, a plan, scheme or design to engage in fraudulent solicitation. Thus, "knowing and willful" is an element of the statute rather than a separate basis for increased civil and criminal liability under 2 U.S.C. § 437g(d)(1)(C).

1 affiliate of BPO, Inc.⁴ According to press reports, Ms. Novacek hired one of the BPO
2 entities to manage the Committee's fundraising and pay the Committee's telemarketing
3 bills. The BPO entity, in turn, hired Apex to conduct the telemarketing calls. It is
4 unknown at this time which entity (BPO, Inc. or BPO Advantage, LP) paid Apex or
5 conducted business with Apex, but it appears that the companies are virtually
6 interchangeable.

7 Ms. Novacek and the Committee clearly did business and were familiar with the
8 BPO entities. In fact, it appears that Ms. Novacek was a representative of the BPO
9 entities: Ms. Novacek is the only representative referenced in the BPO entities' Dun and
10 Bradstreet reports, and their addresses and telephone numbers are the same as Ms.
11 Novacek's home (which is the same address and telephone number as the Committee).
12 Therefore, from the evidence available at this time, it appears that the Committee
13 knowingly and willfully participated in a scheme or plan with Ms. Novacek and the BPO
14 entities to execute the telephone call script that fraudulently misrepresented the
15 Committee as affiliated with the Republican Party.

16 Accordingly, the Commission found reason to believe that the Committee
17 knowingly and willfully violated 2 U.S.C. § 441h(b)(2).

18 *C. The Solicitations Failed to Carry Appropriate Disclaimers.*

19 Any public communication by any person that solicits any contribution or for
20 which a political committee makes a disbursement must contain a disclaimer. 2 U.S.C.
21 § 441d(a); 11 C.F.R. § 110.11(a). A public communication, for this purpose, includes
22 any communication by mailing or phone bank. 11 C.F.R. § 100.26. A "telephone bank"

⁴ Collectively, BPO, Inc. and BPO Advantage, LP will be referred to as "the BPO entities."

1 means more than 500 telephone calls of an identical or substantially similar nature within
2 a 30-day period. 11 C.F.R. § 100.28. "Substantially similar" means communications that
3 include substantially the same template or language. *Id.* If the communication is not
4 authorized by a candidate, a candidate's authorized political committee or any agent, the
5 disclaimers must state the name and street address, telephone number or World Wide
6 Web address of the person who paid for the communication and state that the
7 communication is not authorized by any candidate or candidate's committee. 2 U.S.C.
8 § 441d(a)(3); 11 C.F.R. § 110.11(b)(3). The disclaimer must be presented in a clear and
9 conspicuous manner, be of sufficient type size to be clearly readable, and be contained in
10 a printed box set apart from the other content of the communication. 2 U.S.C. § 441d(c);
11 11 C.F.R. §§ 110.11(c)(1), 110.11(c)(2)(i)-(ii).

12 Here, the call script used by the Committee did not contain any disclaimer as to
13 who paid for or authorized the calls, despite the fact that they were direct solicitations for
14 contributions and donations. The exact number of calls made and the period in which
15 those calls were made are unclear at this time.

16 The mailings sent by the Committee contained a disclaimer stating that the
17 mailing was paid for by the Republican Victory 2004 Committee and was not authorized
18 by any candidate or candidate committee. However, the disclaimer was not set aside in a
19 printed box apart from other content of the communication. Failure to include a box
20 around the disclaimer is a *per se* violation of the Act. Accordingly, the Commission
21 found reason to believe the Committee violated 2 U.S.C. §§ 441d(a) and (c).

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D. The Committee Failed to File Appropriate Reports with the Commission.

The Committee apparently existed as early as January 2004, although it is unclear at this time when the Committee began soliciting contributions and donations. The Act provides that a political committee shall file a Statement of Organization within 10 days of becoming a political committee, meaning that it received contributions aggregating in excess of \$1,000 per year or made expenditures aggregating in excess of \$1,000 per year. 2 U.S.C. §§ 431(4), 433(a). However, the Committee did not file a Statement of Organization with the Commission until June 30, 2004. The Committee has admitted that it should have filed a Statement of Organization sooner and that its June filing was late.

The Act also requires that a treasurer of a political committee file reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). Furthermore, all committees, other than an authorized candidate's committee, shall file quarterly reports in a year in which a regularly scheduled general election is held; the last day for filing is the 15th day after the last day of each quarter, or October 15, 2004 for the third quarter. 2 U.S.C. § 434(a)(4)(A)(i). We have no documentary evidence regarding the amount of money collected by the Committee, or whether any significant disbursements or political donations were made by the Committee. However, in October 2004, Mrs. Novacek informally told RAD that the Committee has engaged in more than \$50,000 worth of activity. From the statements in its mailings and phone scripts, it appears that the Committee, at least in part, promoted President Bush directly; intended to affect federal elections; targeted Republicans for voter registration; and attempted to conduct voter mobilization activities. Accordingly, those funds were subject to allocation among

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1 federal and nonfederal candidates and could be subject to federal contribution limitations.

2 See AO 2003-37 at 2-4, 9-10, 13, 15, and 20; 11 C.F.R. §§ 106.1, 106.6(b), 106.6(c).

3 Despite repeatedly acknowledging that it was and is required to file reports with
4 the Commission regarding its finances, to date, the Committee has failed to file *any*
5 financial report with the Commission. Those repeated failures occurred despite the
6 Commission's explicit instructions directly to the Committee through Ms. Novacek.
7 First, in May 2004, Ms. Novacek admitted that she knew the Committee was required to
8 file a report with the Commission in July; however, the Committee did not file a report in
9 July 2004. Then, in July 2004, despite her previous acknowledgement, Ms. Novacek
10 claimed that she only learned on June 30, 2004 that she was required to file with the
11 Commission any reports for the Committee. Ms. Novacek further claims that she then
12 contacted the Commission's Office of Public Information, which purportedly advised her
13 that the report would be filed late and, therefore, she should wait to file the report until
14 after the third quarter. Even in the unlikely event that the Office of Public Information
15 actually gave this advice to Ms. Novacek and the Committee, Ms. Novacek knew, as of
16 June 30, 2004 at the latest, that she was required to file with the Commission any reports
17 on behalf of the Committee.

18 Second, long after that conversation with the Commission's Office of Public
19 Information, on the morning of October 14, 2004, Ms. Novacek contacted RAD, stating
20 that she had only recently learned that the Committee was required to file reports with the
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1 Commission and requested assistance from RAD.⁵ At that time, Ms. Novacek informed
2 the RAD analyst that the Committee had engaged in more than \$50,000 worth of activity,
3 which prompted the RAD analyst to advise Ms. Novacek that the Committee was
4 required to file electronically with the Commission. Ms. Novacek informed the RAD
5 analyst that she had yet to even request an electronic password from the Commission.
6 The RAD analyst advised Ms. Novacek to fax a request for an electronic password
7 immediately and to file the report (even if the report would be filed after the October 15,
8 2004 deadline) as soon as she received the password. To date, it does not appear that Ms.
9 Novacek has requested a password and she has not submitted any report to the
10 Commission. On November 2, 2004, RAD sent the Committee a Notice of Failure to
11 File. On December 17, 2004, RAD sent the Committee via Ms. Novacek a second Notice
12 of Failure to File. To date, Ms. Novacek has not responded to either Notice.
13 The Commission repeatedly instructed the Committee, through Ms. Novacek,
14 directly when and how to submit the Committee's reports to the Commission.
15 Furthermore, the Committee apparently has engaged in a significant amount of activity
16 for the calendar year involving more than \$50,000. Except for the minimal reports filed
17 with the Texas Ethics Commission (which do not demonstrate \$50,000 worth of activity
18 and which were last filed at the end of July 2004), that money is unaccounted for by the
19 Committee. To date, the Committee has failed to file any report with the Commission
20 reflecting any donations received, disbursements made, or cash on hand, other than the
21 Statement of Organization filed in May and amended in September.

⁵ Ms. Novacek also asked the RAD analyst whether the Committee could accept unlimited contributions from one source and whether the Committee could accept corporate contributions. The RAD analyst advised Ms. Novacek of the contribution limitations and directed her to the BCRA supplement on the Commission's website for additional information.

1 **Finally, it appears that the Committee committed knowing and willful violations**
2 **of the Act. The Committee's response states that the Committee is a first-time filer and**
3 **implies that it should be excused from any penalties for its violations of the Act.**
4 **However, the Committee's and Ms. Novacek's actions demonstrate that failure to file**
5 **with the Commission proper reports was not accidental: by her own account, Ms.**
6 **Novacek had been repeatedly informed that she was required to file with the Commission**
7 **reports on behalf of the Committee and failed to do so. Indeed, RAD has notified the**
8 **Committee through Ms. Novacek on two separate occasions that it failed to file**
9 **appropriate documents with the Commission, but the Committee did not respond to either**
10 **notice. If the Committee and Ms. Novacek were "confused," as they apparently allege in**
11 **their response, one would think they would have made at least an attempt to inquire about**
12 **why they were receiving non-filer notices. Moreover, in light of the potential section**
13 **441h(b) violations, the Committee's failure to file reports of receipts and disbursements**
14 **with any authority except the Texas Ethics Commission, and its failure to file reports**
15 **with any agency at all after July 2004, raises questions as to whether the Committee is**
16 **intentionally hiding what it has done with the money it has collected. Accordingly, the**
17 **Commission found reason to believe that the Committee knowingly and willfully violated**
18 **2 U.S.C. §§ 433(a) and 434(a).**

19 **Based on the foregoing information, the Commission found reason to believe that**
20 **the Republican Victory Committee, Inc. a/k/a Republican Victory 2004 Committee, Inc.**
21 **a/k/a Republican Victory 2004 Committee knowingly and willfully violated 2 U.S.C.**
22 **§§ 433(a), 434(a), and 441h(b). Furthermore, the Commission found reason to believe**

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- 1 that the Republican Victory Committee, Inc. a/k/a Republican Victory 2004 Committee,**
- 2 Inc. a/k/a Republican Victory 2004 Committee violated 2 U.S.C. §§ 441d(a) and 441d(c).**

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